

United States Senate

September 16, 2024

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Dear Director Young:

The Biden administration has already taken strong steps to protect the public's civil rights and liberties against potential harms inflicted by artificial intelligence (AI), but more must be done. We urge you to prioritize the mitigation, prevention, and elimination of algorithmic bias and discrimination. In particular, we urge the White House Office of Management and Budget (OMB) to require all federal agencies that use AI for consequential decisions to establish a civil rights office, if they do not already have one; ensure all civil rights offices are staffed with experts in algorithmic discrimination; and encourage federal agencies to establish additional safeguards to prevent algorithmic discrimination. By ensuring that agencies have the resources, personnel, and policies to detect and mitigate bias, we can ensure that the AI age does not come at the expense of already marginalized and vulnerable communities.

Without new protections, today's supercharged, AI-powered algorithms risk reinforcing and magnifying the discrimination that marginalized communities already experience due to poorly trained and tested algorithms. Although the deployment of artificial intelligence can deliver real benefits, it cannot work if it is biased or discriminatory. The stakes — and harms — are especially high where entities use algorithms to make “consequential decisions” on such issues as an individual's job application for a job, medical treatment, admission to an educational institution, or qualification for a mortgage. Over the past decade, biased algorithms have increasingly been used to make or influence decisions, imposing real harm on Black, Brown, immigrant, and other marginalized communities. Algorithms used during applications for mortgages, for example, have been found to approve white homebuyers at significantly higher rates than homebuyers of color.¹ A 2018 investigation into algorithms used in hiring and employment found that these tools can “reproduce patterns of inequity at all stages of the hiring process,”² and the use of these hiring tools has only expanded.³ Facial recognition technology

¹ Emmanuel Martinez & Lauren Kirchner, *The secret bias hidden in mortgage-approval algorithms*, Associated Press (Aug. 25, 2021), <https://apnews.com/article/lifestyle-technology-business-race-and-ethnicity-mortgages-2d3d40d5751f933a88c1e17063657586>.

² Miranda Bogen & Aaron Rieke, *Help Wanted: An Examination of Hiring Algorithms, Equity and Bias*, Upturn (Dec. 2018), <https://www.upturn.org/work/help-wanted/>.

³ Olga Akselrod & Cody Venzke, *How Artificial Intelligence Might Prevent You From Getting Hired*, American Civil Liberties Union (Aug. 23, 2023), <https://www.aclu.org/news/racial-justice/how-artificial-intelligence-might-prevent-you-from-getting-hired>.

has blocked access to unemployment and other government benefits, such as in one instance where 25 percent of people experienced trouble with a facial verification system to access unemployment benefits.⁴ Many algorithms used in the health care system to assist in clinical decision-making may lack representative data and can reinforce bias, which can be detrimental to patients.⁵ Additionally, generative AI chat bots can contain overt and hidden prejudices.⁶ The list goes on. The increasing use of AI could dramatically expand these harms.

The Biden administration has taken significant steps to address these issues. In October 2022, the Administration released the Blueprint for an AI Bill of Rights, a comprehensive framework that set an important foundation for combatting algorithmic discrimination, including recommending proactive equity assessments of automated systems and ensuring all data used is representative and robust.⁷ A year later, President Biden issued a sweeping Executive Order that focused on AI, including how the executive branch would act to mitigate discrimination and bias in these systems.⁸ These principles were cemented in OMB's recent AI guidance.⁹ OMB's newest policies require agencies that use "rights-impacting AI" to complete impact assessments, regularly evaluate any risks, and mitigate bias and discrimination harms.¹⁰ Elsewhere, the Biden administration has made important strides and provided guidance on how to mitigate harmful and discriminatory AI systems and have held companies accountable for biased algorithms.¹¹ With the ever-increasing use of algorithms across society and the growing investment in AI, these safeguards are essential to ensure AI systems work as intended and are a responsible use of resources.

⁴ Rebecca Heileil, *New York's Chosen AI Keeps Users From Collecting Unemployment*, New York Focus (Jun. 16, 2023), <https://nysfocus.com/2023/06/16/id-me-facial-recognition-unemployment-new-york>.

⁵ Natalia Norori et al., *Addressing bias in big data and AI for health care: A call for open science*, 50 Patterns (Oct. 8, 2021), <https://doi.org/10.1016/j.patter.2021.100347>; Ziad Obermeyer et al., *Dissecting racial bias in an algorithm used to manage the health of populations*, Science (Oct. 4, 2019), <https://www.science.org/doi/pdf/10.1126/science.aax2342>.

⁶ Myra Cheng et al., *Marked Personas: Using Natural Language Prompts to Measure Stereotypes in Language Models*, Cornell University (May 29, 2023), <https://arxiv.org/abs/2305.18189>; Valentin Hofmann et al., *Dialect prejudice predicts AI decisions about people's character, employability, and criminality*, Cornell University (Mar. 1, 2024), <https://arxiv.org/pdf/2403.00742>.

⁷ *Blueprint for an AI Bill of Rights*, The White House (Oct. 5, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

⁸ *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, The White House (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>.

⁹ *FACT SHEET: Vice President Harris Announces OMB Policy to Advance Governance, Innovation, and Risk Management in Federal Agencies' Use of Artificial Intelligence*, The White House (Mar. 28, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/28/fact-sheet-vice-president-harris-announces-omb-policy-to-advance-governance-innovation-and-risk-management-in-federal-agencies-use-of-artificial-intelligence>.

¹⁰ *Id.*

¹¹ *AI Accountability Policy Report*, National Telecommunications and Information Administration (Mar. 27, 2024), <https://www.ntia.gov/issues/artificial-intelligence/ai-accountability-policy-report>; Press Release. Federal Trade Commission, *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards* (Dec. 19, 2023); Press Release, U.S. Dep't of Justice, *Justice Department Secures Groundbreaking Settlement Agreement with Meta Platforms, Formally Known as Facebook, to Resolve Allegations of Discriminatory Advertising* (June 21, 2022).

While we commend the Biden administration for these steps, we urge you to ensure that federal agencies have the organizational structures and personnel to address algorithmic discrimination. The Biden administration's hiring of Chief AI Officers (CAIOs) is a good step forward,¹² but OMB should also ensure that the CAIOs have the resources and expertise to address civil rights harm created by AI-driven algorithms. Additionally, OMB should direct agencies that use, fund, and procure AI for consequential decisions — defined broadly — to establish civil rights offices, if they do not already have one. These new offices — along with existing civil rights offices — should be staffed with technologists and experts in algorithmic discrimination whose job responsibilities include mitigating algorithmic bias and discrimination and facilitating proactive and ongoing outreach to civil rights stakeholders and affected populations. The federal civil rights offices should also collaborate with each other to develop best practices and share information on identifying biased algorithms and mitigating their harms. To that end, consistent with the AI Executive Order, OMB should ensure that the U.S. Department of Justice's Civil Rights Division is effectively coordinating civil rights enforcement on AI among federal agencies. Finally, OMB should consider directing key federal agencies to publish an annual report on the state of AI civil rights harms in their respective jurisdictions and their efforts to mitigate those harms. By establishing civil rights offices at every federal agency with the proper resources and expertise, the Biden administration can ensure that identifying and mitigating algorithmic discrimination is a priority across the government.

Building on OMB's guidance that agencies should cease use of any AI that the agency finds cannot adequately mitigate unlawful discrimination,¹³ OMB should also work with agencies to set strict guidelines to prevent algorithmic discrimination within relevant agency jurisdiction. Although agencies have different jurisdictions and statutory authority, OMB should encourage agencies, where lawful and applicable, to use the full force of their authority to:

- Require recipients of federal funds and contracts that use, develop, procure, or fund AI-powered algorithms used in consequential decisions to complete pre-development, pre-deployment, and ongoing impact assessments to identify, mitigate, prevent, and eliminate biased AI where applicable;
- Require recipients of federal funds and contracts to allow individuals to opt out of AI-powered algorithms used in consequential decisions and instead request human decision-makers where applicable;
- Fund the development of common, accessible resources for auditing algorithms — including open source tools — for bias, discrimination, and other harms; and

¹² Kathryn Watson, *White House orders federal agencies to name chief AI officers*, CBS News (Mar. 28, 2024), <https://www.cbsnews.com/news/white-house-chief-ai-officers-federal-agencies-artificial-intelligence/>.

¹³ *FACT SHEET: Vice President Harris Announces OMB Policy to Advance Governance, Innovation, and Risk Management in Federal Agencies' Use of Artificial Intelligence*, The White House (Mar. 28, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/28/fact-sheet-vice-president-harris-announces-omb-policy-to-advance-governance-innovation-and-risk-management-in-federal-agencies-use-of-artificial-intelligence>.

- Develop guidance on best practices for mitigating the development and deployment of biased AI-powered algorithms, including the conditions under which recipients of federal funds and contracts can be held accountable for discrimination.

Finally, because a regulation is only as strong as its enforcement, OMB should support federal agencies that take robust enforcement against any company found to violate these rules. OMB should also convene Inspectors General, through the Council of the Inspectors General (CIGIE), to coordinate on best practices on the mitigation and prevention of biased AI-powered algorithms. By establishing guidance and standards, the Biden administration can help mitigate, prevent, and eliminate the biased use of AI.

Thank you for your attention to this important matter.

Sincerely,



Charles E. Schumer
United States Senator



Edward J. Markey
United States Senator

